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Uniting Foes of a Single Nation: Religious Dispute Resolution for India and Pakistan

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Uniting Foes of a Single Nation: Religious Dispute Resolution for India and Pakistan

By Abraham Reinherz

I. Introduction

In October of 1946, Mahatma Gandhi said:

But I am firmly convinced that the Pakistan demand as put forth by the Muslim League is un-Islamic and I have not hesitated to call it sinful. Islam stands for unity and the brotherhood of mankind, not for disrupting the oneness of the human family. Therefore, those who want to divide India into possibly warring groups are enemies alike of India and Islam. They may cut me to pieces but they cannot make me subscribe to something which I consider to be wrong.¹

India and Pakistan were partitioned in 1947 and since then have fought three wars.² A serious concern regarding these two neighboring countries is that they are both self-declared nuclear powers.³ India is a country where a majority of the population practices Hinduism.⁴ Pakistan was a country “established in the name of Islam . . . as a homeland for Indian Muslims.”⁵ Alternative Dispute Resolution (“ADR”) has risen prominently in India over the course of the last few years.⁶ Likewise, Pakistan also uses ADR, with

¹ ALLEN HAYES MERRIAM, *GANDHI VS JINNAH: THE DEBATE OVER THE PARTITION OF INDIA*, 122 (1980).

² Anthony Wanis St. John, *The Mediating Role in the Kashmir Dispute Between India and Pakistan*, 21-SPG FLETCHER F. WORLD AFF. 173, 174 (1997).

³ Michael L. Feeley, *Apocalypse Now? Resolving India's and Pakistan's Testing Crisis*, 23 SUFFOLK TRANSNAT'L L. REV. 777, 777 (2000).

⁴ Brenda Cossman & Ratna Kapur, *Secularism's Last Sigh?: The Hindu Right, the Courts, and India's Struggle for Democracy*, 38 HARV. INT'L L.J. 113, 129 (1997).

⁵ *Pakistan, Islam In*, OXFORD ISLAMIC STUDIES ONLINE, http://www.oxfordislamicstudies.com/article/opr/t125/e1809?_hi=1&_pos=1 (last visited Oct. 18, 2016).

⁶ Sukhsimranjit Singh, *International Dispatch: Dispute Resolution Developments in India*, 21 No. 1 DISP. RESOL. MAG. 34, 34 (2014).

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conciliation, mediation, and arbitration recognized by law.⁷ In the past, the United Nations (“UN”) Security Council attempted to mediate the conflict between Pakistan and India, but it failed each time.⁸

This article will bring forth the argument that a religious-based dispute resolution mechanism should be employed to, at a bare minimum, build bridges between the two countries that are dominated by Hinduism and Islam, as previously stated. This article is not suggesting that religious-based dispute resolution will be a panacea to the India-Pakistan conflict, but simply a method of putting the countries on a step towards reconciliation. Section II of the article will detail the historical background of the conflict. Section III will highlight existing ADR in both India and Pakistan. Section IV will go over the Islamic perspective on dispute resolution. Section V will review the Hindu method of dispute resolution. Section VI will explain how commonalities between Hindu and Islamic dispute resolution can mitigate the hostilities between the peoples of India and Pakistan. Finally, Section VII will conclude the article.

II. Historical Background

The “Jammu and Kashmir region (‘Kashmir’)” is “a place where aboriginal ancestors of current inhabitants lived undisturbed for thousands of years.”⁹ The conflict first arose when Britain partitioned the region after it became clear that its control over India was no longer feasible because of the Second World War.¹⁰ The Indian subcontinent was divided among princely states that had to decide to align with either India or Pakistan following the British exit.¹¹ Kashmir’s ruler sought independence but was forced to give control of the state to India because the ruler requested India’s help to repel an invasion of pro-Pakistani militants.¹² Pakistan officially entered Kashmir

⁷ Taha Alizai & Syed Bulent Sohail, *ADR Client Strategies in the Middle East and Africa: ADR in Pakistan: Successful Client Strategies*, ASPATORE, 1, 1 (2009 WL 2966296).

⁸ See Sumathi Subbiah, *Security Council Mediation and the Kashmir Dispute: Reflections on Its Failures and Possibilities for Renewal*, 27 B.C. INT’L & COMP. L. REV. 173, 176-80 (2004).

⁹ Neal D. Gidvani, *The Peaceful Resolution of Kashmir: A United Nations Led Effort for Successful International Mediation and a Permanent Resolution to the India-Pakistan Conflict*, 18 TRANSNAT’L L. & CONTEMP. PROBS. 721, 722 (2009).

¹⁰ *Id.* at 723.

¹¹ *Id.*

¹² *Id.*

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in November of 1947 in response to India, which instigated the first Kashmir war.¹³ The war ended in July 1949 with a ceasefire line created by the Karachi Agreement.¹⁴

The Pakistanis view Kashmir as rightfully belonging to them because the region contains a Muslim majority, and they view Indian-Muslims as being a different nation.¹⁵ In contrast, India holds that “the Instrument of Accession, signed by the Maharaja of Kashmir in 1947, lawfully cede[d] control over Jammu and Kashmir to India.”¹⁶ India also claims that “elections held in Kashmir since 1952” indicate that the people there have accepted Indian sovereignty.¹⁷ More recently, Pakistan claims India illegally occupies Kashmir, and thus any uprisings are a result of India’s human rights violations, but India claims that any uprisings are a result of Pakistan’s support of terrorism in the hotly disputed territory.¹⁸

During the first Kashmir War, India went to the UN Security Council accusing Pakistan of providing invaders with financial and military support, but Pakistan refuted those claims and instead argued that a plebiscite should decide Kashmir’s status.¹⁹ The UN Security Council adopted a resolution that established the United Nations Commission on India and Pakistan (“UNCIP”).²⁰ One of its functions was to act as a mediator between the two sides.²¹ To continue, the UN enacted Resolution 47 with the goal of achieving a permanent status agreement.²² The UN terminated UNCIP after various failures in mediation and replaced it with multiple UN Representatives, who were likewise unsuccessful in mediation efforts.²³ The UN was most involved in mediating from 1948 to the 1965 India-Pakistan War and lessened involvement until the 1971 India-Pakistan War.²⁴ The Simla Agreement,

¹³ *Id.* at 724.

¹⁴ *Id.* at 725.

¹⁵ *Id.* at 725-26.

¹⁶ *Id.* at 726.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 724.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 725.

²³ *Id.*

²⁴ *Id.* at 726.

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adopted at the end of the third war, had India and Pakistan agree to work bilaterally to resolve the conflict.²⁵ As a result, India ceased to recognize the authority of the United Nations Military Observer Group and restricted their movements on the territory under Indian control.²⁶ Naturally, Pakistan continued to accept the legitimacy of the UN forces in contrast with India.²⁷

Maintaining the bloody conflict proved to have serious economic costs for both India and Pakistan.²⁸ India attempted to ease economic restrictions when it granted “Pakistan Most Favored Nation status,” but Pakistan refused to give India that distinction.²⁹ The countries have had continuous, but negligible trade, with each other that accounts for about one percent of each of their global trade.³⁰

III. Dispute Resolution in India and Pakistan

A. India

India has both a formal and informal dispute resolution mechanism.³¹ Informally, villages in India have a dispute resolution mechanism where five village elders, usually men, in what is called the *Panchayat*, act similarly to arbitrators “to resolve local disputes.”³² *Panchayats* resolve disputes based on customary village law while factoring in the long-term interest of maintaining peaceful coexistence.³³ Modernly, these *Panchayats* have generated controversy.³⁴ India’s centralized court system functions well

²⁵ *Id.*

²⁶ *Id.* at 726-27.

²⁷ *Id.*

²⁸ *Id.* at 738.

²⁹ *Id.* at 738-39.

³⁰ *Id.* at 739. As of the writing of this article, there was a border skirmish between the countries where Pakistan’s Defense Minister, Khawaja Asif, threatened to destroy India with nuclear weapons in late September 2016. Tom Batchelor, *Pakistan threatens to DESTROY India with atomic bomb as nuclear enemies edge towards brink*, EXPRESS (Sep. 29, 2016 3:21 PM), <http://www.express.co.uk/news/world/715838/Pakistan-threatens-India-nuclear-war-Kashmir-dispute-heightens-tensions>.

³¹ Singh, *supra* note 6, at 34.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

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alongside the informal *Panchayat* system, and some Indian states have codified *Panchayat* law.³⁵ The Indian government can also inquire into alleged misconduct by the *Panchayat*.³⁶ Another informal Indian dispute resolution mechanism involves family feuds where “the extended family intervene[s] to promote settlement of marital conflict and discourage divorce.”³⁷ The familial dispute resolution is usually amicable, but social ostracism can be used to coerce a desired result.³⁸ Family members in dispute also have potential access to a formal dispute resolution proceeding.³⁹ For example, if a “party files a matrimonial action in a family court, the case” may be “referred to court-annexed mediation.”⁴⁰

Formal dispute resolution was first recognized in India with the passing of the Industrial Disputes Act of 1947, where conciliators are “charged with . . . mediating . . . and promoting the settlement of [i]ndustrial disputes.”⁴¹ In the early 1990s, the national Chief Justices declared that the adoption of mediation was necessary to reduce backlog and delay in the judicial system.⁴² Formal dispute resolution kicked off in 1999 when the Code of Civil Procedure was amended to allow judges to refer cases to arbitration or mediation.⁴³ Court-annexed mediation centers in Bangalore and Delhi have resolved thousands of cases.⁴⁴

B. Pakistan

Pakistan acknowledges ADR in the forms of mediation, conciliation, and arbitration.⁴⁵ Pakistan has a mediation center in Karachi, known as the Karachi Centre for Dispute Resolution, that is meant for settlement of commercial disputes, and another in Lahore, known as the Alternate Dispute

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 35.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Alizai & Sohail, *supra* note 7, at 1.

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Resolution Centre, that provides a range of ADR services such as “neutral evaluation, neutral opinion, mediation, conciliation, negotiations, and arbitration.”⁴⁶ Also, Pakistan’s tax laws have provisions that give the option of referring disputes to ADR committees.⁴⁷ ADR has been an integral part of Pakistan’s society, with arbitration being the oldest form.⁴⁸ Similarly to India, Pakistan uses the *Panchayats* to resolve disputes primarily in rural areas.⁴⁹

The primary arbitration legislation in Pakistan is the Arbitration Act of 1940, which gives a code for arbitration via the intervention or nonintervention of Pakistani courts.⁵⁰ A 2002 amendment of the Civil Procedure Code allowed for the ADR techniques of conciliation and mediation.⁵¹ To go further, Pakistani courts are encouraged to have litigants use ADR methods in order to reduce backlogs under the measure of the National Judicial Policy adopted by the Chief Justice of Pakistan.⁵² This means courts are expected to refer cases involving ADR to institutions like the Karachi Centre for Dispute Resolution and Alternate Dispute Resolution Centre.⁵³

Furthermore, Pakistan effectively recognized the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards through the Recognition and Enforcement legislation in 2005.⁵⁴ This ordinance has been enforced by repeated “re-promulgations” by Pakistan’s president.⁵⁵

There is no legal requirement, however, that mandates parties to submit to ADR at any point during a legal proceeding.⁵⁶ Nonetheless, “many commercial contracts drafted in Pakistan require the parties to try to resolve disputes by following certain procedures before resorting to arbitration or

⁴⁶ *Id.*

⁴⁷ *Id.* at 2.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 3.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 4.

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litigation.”⁵⁷ This is backed up by the Civil Procedure Code, which gives courts the authority to require mediation or conciliation to speed up the legal process as long as the ADR remains consistent with the Civil Procedure Code.⁵⁸ In addition, ADR has shown to be efficient and affordable in Pakistan considering most cases are started by small and medium enterprises.⁵⁹ ADR has been shown to benefit various sectors in Pakistan economically with domestic arbitration and foreign arbitration being the preferred ADR methods.⁶⁰

Pakistan has adopted the 2007 Ordinance, mandating courts to refer parties with disputes that have an arbitration clause in the contract to international forums to “uphold the arbitration agreement.”⁶¹ Issues relating to cross-border disputes are referred to international tribunals like the London Court of International Arbitration and the International Chamber of Commerce.⁶²

Importantly though, for purposes of ADR, negotiation is not used often in Pakistan.⁶³ Another ADR issue, with regard to arbitration, is that the losing party can effectively always challenged the result because Pakistan’s Arbitration Act allows an arbitration award to be set aside for any sort of ambiguous “misconduct” by the arbitrator.⁶⁴ However, Pakistani courts usually do not interfere with the arbitrator’s decision.⁶⁵

IV. Islamic Dispute Resolution

Pakistan, as an Islamic country, values settlement of disputes because it is a fundamental component of Islam, which is why arbitration is widely used.⁶⁶ The Quran, the text that Muslims believe is a revelation by God,⁶⁷

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* The 2007 Ordinance implements the New York Convention. *Id.*

⁶² *Id.* at 5.

⁶³ *Id.*

⁶⁴ *Id.* at 10.

⁶⁵ *Id.*

⁶⁶ *Id.* at 2.

⁶⁷ Eugene R. Milhizer, *So Help Me Allah: An Historical and Prudential Analysis of Oaths As Applied to the Current Controversy of the Bible and Quran in Oath Practices in America*, 70 OHIO ST. L.J. 1,

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proscribes that ADR is preferential to settle disputes for various issues that include private property.⁶⁸ Furthermore, Islamic Shariah Law offers guidance as to the appropriate qualities and characteristics of the arbitrator along with practical arbitration procedures.⁶⁹

Shariah Law is the paramount law in Pakistan as enshrined in its Constitution of 1973.⁷⁰ In the landmark Supreme Court case of *Hitachi Ltd. v. Rupali Polyester*, (1998) SCMR (SC) 1619 (Pak.), the Court ruled that in arbitration law courts need to abide by Islamic jurisprudence.⁷¹ The Court reiterated earlier decisions that indicated that “the Rules of equity and justice, good conscience, and public policy, as contained in Muslim jurisprudence, are to be applied to situations not directly covered.”⁷² Islamic jurisprudence is much like most jurisdictions in the world; parties in arbitration are held to their contractual commitments and are expected to honor the full sanctity of the contract.⁷³

43 (2009). There are various portions of the Quran considered universally applicable to all Muslim sects, which includes moral and religious instructions that all Muslims are obliged to follow. *Id.* Approximately 85-90% of Pakistani Muslims follow the Sunni sect of Islam. *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html> (last visited Feb. 14, 2017). Four different schools of thought developed within Sunni Islam, and each recognizes the other as correct and true even if individuals would subscribe to only one of them. William A. Coggins, *Succession in Traditional Islamic Law As the Islamic Population in the U.S. Grows, Attorneys Need to Appreciate the Cultural and Legal Foundations of Muslim Clients in Order to Represent Their Interests Adequately. The "Wishes of the Testator" Principle and Missouri's Intestate Statutory Schedule Both Run Counter to Traditional Islamic Tenets*, 60 J. Mo. B. 180, 181 (2004). Pakistan follows the Hanafi school of thought. Abbas Hadjian, *The Children of Shari'a*, L.A. LAW, 35, 36 (2013).

⁶⁸ Alizai & Sohail, *supra* note 7, at 2.

⁶⁹ *Id.* Shariah Law encompasses the Quran, sunnah, and the hadith. Milhizer, *supra* note 67, at 46. The sunnah describes the way the prophet of Islam, Muhammad, lived his life. *Id.* at 45. The hadith is composed of narrations of Muhammad's life, “his words and sayings, along with the verbal approval or disapproval he gave to the words and actions of others.” *Id.* The Hanafi school of Sunni Islam allows modest flexibility “in the use of human reasoning or judgment in the interpretation of the Quran and the application of sharia.” UNIVERSITY OF PENNSYLVANIA, *A Concise Summary of the Evolution of Islamic Law (Sharia) From its Inception to the Present 5*, <http://www.upenn.edu/emertus/events/IslamicLaw.pdf> (last visited Feb. 14, 2017).

⁷⁰ Alizai & Sohail, *supra* note 7, at 2.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

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Under Islam, Muslims should use techniques like arbitration to resolve quarrels instead of resorting to violence.⁷⁴ One passage in the Quran proclaims that “[y]ou should always refer it (disputes) to God and to His Prophet. And obey Allah and His Messenger; And fall into no disputes, lest you lose heart And your power depart; and be patient and persevering: for Allah is with those who patiently persevere.”⁷⁵ The Quran proclaims that a Muslim is someone “who has made peace with God and others.”⁷⁶ To have peace with God requires total submission to God’s will, to have peace with others means a person should perform good acts for other human beings.⁷⁷

With regards to Islam, it is important to discuss the concept of *jihad* in relation to conflict resolution.⁷⁸ *Jihad* is striving to be follow the path of Allah in all aspects of life, which would include “civil, political, economic, social, educational, religious and cultural.”⁷⁹ There are various interpretations of this word, and there is some consensus that the use of force is permitted in some scenarios.⁸⁰ However, there is a broad range of meanings for *jihad*, and some studies have shown that it does not mean the constant use of violence to solve problems with non-Muslims or Muslims.⁸¹ To illuminate, there are verses in the Quran that advocate for a nonviolent and peaceful form of *jihad*, and various Islamic sects stress that the self-*jihad* is the most important and most difficult to grasp.⁸²

Islam does promote peacebuilding through face-to-face communication as superior to using force, and that a third party can be essential in aiding in this process to assist in building relationships, reducing tensions, and getting the parties to communicate with each other.⁸³ The Quran prescribes this type of peaceful intervention especially for Muslims, as it states:

⁷⁴ Mohammad Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, 15 J. of L. AND RELIGION 217, 245 (2001).

⁷⁵ *Id.* (quoting the Quran 8:46).

⁷⁶ *Id.*

⁷⁷ *Id.* The Quran states: “Nay, whoever submits himself entirely to God, and is the doer of good to others, he has his reward from his Lord.” *Id.* (quoting the Quran 2:112).

⁷⁸ The word *jihad* is Arabic for exertion, particularly to strive for one’s goal. Manisuli Ssenyonjo, *Jihad Re-Examined: Islamic Law and International Law*, 10 SANTA CLARA J. INT’L L. 1, 4 (2012).

⁷⁹ *Id.*

⁸⁰ Abu-Nimer, *supra* note 74, at 245.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 246.

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If two parties among the believer fall into a quarrel, make you peace between them. But, if one of them transgresses beyond bounds against the other, then fight against the one that transgresses until it complies with the command of Allah. But, when it so complies, then make peace between them with justice and be fair. For, God loves those who are fair. The believers are but a single brotherhood; so make peace between your brothers and fear Allah that you may receive mercy.⁸⁴

These verses back up the concept of using third party intervention and mediation to resolve conflicts with justice and fairness.⁸⁵

Muhammad himself personally acted as a third-party mediator in resolving a problem related to the Black Stone in Mecca as recorded in the hadith.⁸⁶ The Mecca clans argued with each other “over the *K’aba*’s building and the lifting of the Black Stone to its higher location.”⁸⁷ Muhammad was asked to intervene because the clans considered him to be a reliable individual.⁸⁸ Muhammad had the stone placed on a cloak, having each clan hold onto a side of the cloak and everyone together to lift the stone to the required height where the Black Stone was placed in a new location.⁸⁹ The simple method of resolution here implies that violence and competition are not necessary when people can come together to creatively solve problems.⁹⁰ This was one of multiple examples where Muhammad used his mediating skills to resolve conflicts.⁹¹

Another example of mediation occurred between Muhammad and the Jewish tribe, Banu Qurayza, where these two parties agreed to have a third-party resolve their dispute.⁹² Under Islam, violence and aggression are not

⁸⁴ *Id.* (quoting the Quran 49:9-10).

⁸⁵ *Id.*

⁸⁶ *Id.* at 247. The Black Stone is located in the holy shrine called the Kaaba, Islam’s holiest site. Susan L. Douglass & Ross E. Dunn, *Interpreting Islam in American Schools*, 588 ANNALS AM. ACAD. POL. & SOC. SCI. 52, 61 (2003); M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 Va. L. Rev. 153, 167 (1993). Islamic tradition dictates that the Quran was revealed to Muhammad in portions during a twenty-two-year period. Liaquat Ali Khan, *Free Markets of Islamic Jurisprudence*, 2006 MICH. ST. L. REV. 1487, 1530 (2006).

⁸⁷ Abu-Nimer, *supra* note 74, at 247.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 247 n.62.

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considered as effective as resolving problems through peaceful methods.⁹³ To go on, Islam also places a higher value on forgiveness than animosity.⁹⁴ Some verses from the Quran illustrate this: “Keep to forgiveness (O Muhammad) and enjoin kindness, and turn away from the ignorant.”⁹⁵ Also, Muslims should “[r]epel evil (not with evil) but with something that is better (*ahsan*)—that is, with forgiveness and amnesty.”⁹⁶ Muslims are encouraged to forgive even while in a state of rage.⁹⁷

Muhammad himself set an example to his Muslim followers after he entered Mecca and prayed to God to forgive the Meccans, despite their persecution of him.⁹⁸ Muslims are expected to be merciful because God is merciful on those who are merciful.⁹⁹ Muhammad showed the value of mercy when he denied his followers their wish of invoking God’s wrath on the Meccans because of the way Muslims were persecuted.¹⁰⁰ Instead, Muhammad proclaimed that he was sent to be a source of compassion and mercy, not to curse anybody.¹⁰¹ The values of forgiveness and reconciliation coincide with Western ideals of conflict resolution as well.¹⁰²

One of the primary responsibilities in Islam is to live in peace and harmony with other human beings.¹⁰³ Deeds and actions are central in promoting peace above just an exchange of dialogue, as the Quran states: “Whosoever brings a good deed will receive tenfold the like thereof, while whosoever brings an ill deed will be rewarded but the like thereof; and they will not be wronged.”¹⁰⁴ Muhammad himself stressed that people who are truly powerful are those who can maintain self-control when they get angry even when faced with extreme persecution.¹⁰⁵ It is better to have patience

⁹³ *Id.* at 247.

⁹⁴ *Id.* at 248.

⁹⁵ *Id.* at 248 (quoting the Quran 7:199).

⁹⁶ *Id.* at 248 (quoting the Quran 23:96).

⁹⁷ *Id.* at 248 (referencing the Quran 42:37).

⁹⁸ *Id.* at 248.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 249.

¹⁰⁴ *Id.* at 248 (quoting the Quran 6:160).

¹⁰⁵ *Id.* at 252.

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than pursue revenge.¹⁰⁶ Muhammad also taught that it is prohibited “to give a worse blow than is given to you,” but one who responds with patience and control is in an advantageous position.¹⁰⁷

In Islam, there exists the concept of one *Ummah*, or community, that should collaborate to motivate feuding groups to unify and strengthen each other by working together.¹⁰⁸ In the Islamic viewpoint, everybody should stand in solidarity with one another because all humans were created equal on the basis of a common origin.¹⁰⁹ Even Muhammad said that both the oppressed and oppressor should be helped, and the way to help the oppressor is “[b]y preventing him from oppressing others.”¹¹⁰ During Muhammad’s life, he had his followers practice the ideals of collectivism and collaboration to respond peacefully to the negative forceful sentiments coming from people who considered his prophecies fraudulent.¹¹¹ The equality of all humans applies to Muslims and non-Muslims alike.¹¹²

The primary lesson of the Quran is that inclusion is better than exclusion, and justice should eradicate injustice.¹¹³ These concepts are displayed in the Islamic concept “of mutual consultation (*shura*) in the governing process.”¹¹⁴ *Shura* is the unity of society stemming from free and open dialogue as a result of equal thought and freedom of expression.¹¹⁵ A leader should get advice, both publicly and privately, from subordinates before making any decisions.¹¹⁶ There are no differing interpretations on the *shura* requirement of a ruler consulting his followers because it was a strong commandment coming from Muhammad.¹¹⁷

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 253.

¹⁰⁸ *Id.* at 254.

¹⁰⁹ *Id.* at 254 (referencing the Quran 4:1).

¹¹⁰ *Id.* at 254.

¹¹¹ *Id.* at 255.

¹¹² *Id.*

¹¹³ *Id.* at 256.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 256-57.

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Islam considers people of other faiths dignified and equal, specifically the so-called people of the Book—Jews and Christians.¹¹⁸ Humans should be judged not on their religion, but rather upon their deeds and actions.¹¹⁹ The Quran requires the peaceful coexistence of Muslims and people of other religions, which implies respecting the scriptures of others.¹²⁰ All people should be protected despite their personal views, faith, or culture.¹²¹

V. Hindu Dispute Resolution

There are two layers to the Hindu approach of dispute resolution: “First, the layer of internal disputes within each one of us that needs to be resolved, and second, the layer of external disputes between people that needs to be resolved.”¹²² The perspective of Hindu dispute resolution can be seen through two pieces of Hindu literature: the Bhagavad Gita and the Mahabharata.¹²³

Hinduism is a religion based on spirituality and that is the ultimate end goal.¹²⁴ Unlike the monotheistic faiths of Judaism, Christianity, and Islam, which have a primary text, Hinduism has thousands of books to be glossed over.¹²⁵ Going on, the Mahabharata translates into “The Great War” in Sanskrit.¹²⁶ The central character of the Mahabharata is Krishna, who is one of the most important Hindu gods.¹²⁷ The important element of the story is when Krishna attempts to arrange for a settlement in order to prevent a war.¹²⁸

Krishna felt that not fulfilling “one’s needs . . . was worse than death.”¹²⁹ It was a person’s dharma that have your needs met; and if you sought peace

¹¹⁸ *Id.* at 259-60.

¹¹⁹ *Id.* at 259 (referencing the Quran 3:113-14, 2:62, and 5:69).

¹²⁰ *Id.* at 259-60.

¹²¹ *Id.* at 261 (referencing the Quran 17:70).

¹²² Aalok Sikand, *ADR Dharma: Seeking A Hindu Perspective on Dispute Resolution from the Holy Scriptures of the Mahabharata and the Bhagavad Gita*, 7 PEPP. DISP. RESOL. L.J. 323, 324 (2007).

¹²³ *Id.* at 323.

¹²⁴ *Id.* at 324.

¹²⁵ *Id.* Hinduism’s thousands of books make it difficult to comprehend or narrow down because there is no single source to turn to. *Id.* Discussion of the various belief systems of Hinduism is beyond the scope of this paper.

¹²⁶ Sikand, *supra* note 122, at 327.

¹²⁷ *Id.* at 336.

¹²⁸ *Id.*

¹²⁹ *Id.* at 353.

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with the right intentions, then you were on the road to righteousness and aligned with dharma.¹³⁰ Krishna disfavored obtaining peace for the purpose of avoiding war, but considered peace acceptable if it arose out of compassion for the enemy.¹³¹ Basically, if one was to pursue peace for the right purposes without sacrificing any self-interest, then it would be appropriate.¹³² This would apply even if your enemy wronged you so much, leaving your blood boiling with a desire for revenge.¹³³ Nonetheless, if you cannot satisfy your needs via peaceful negotiation, then war was the only option.¹³⁴

The Hindu god Krishna gave five reasons as to why peace should be pursued even if it appears completely improbable.¹³⁵ First, a person will be merited by a failed act as long as one puts forth the best effort.¹³⁶ Second, kinsmen have a duty to seek out peace with each other.¹³⁷ Third, when you seek peace, you avoid any blame from the world for not attempting peace.¹³⁸ Fourth, attempting to look for peace is good for your self-conscience.¹³⁹ Finally, it is possible to attain peace even if it appears impossible.¹⁴⁰ In addition, Krishna felt that even with expert and rational deliberation that it was not really possible to know the consequences of the actions one takes.¹⁴¹ Krishna believed in this equation: “Human Exertion + Providence = Success.”¹⁴² This means that if a person diligently pursues a course of action “and if providence wants the action to be successful, it will be.”¹⁴³ Thus, the Mahabharata teaches that you should first attempt to get what you need

¹³⁰ *Id.* Dharma is the Hindu belief of a “self-controlled microcosmic order.” *Id.* at 328. It roughly translates to “the privileges, duties and obligations of a [person], their standard of conduct as a member of [their] community, as a member of [their profession], [and] as a person in a particular stage of life.” *Id.* at 328.

¹³¹ *Id.* at 353-54.

¹³² *Id.* at 354.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

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through peaceful means backed by a strong effort, but if that does not work, then you go to war with full force.¹⁴⁴

There are various lessons taught by the Mahabharata regarding mediators.¹⁴⁵ First of all, mediators must be competent and neutral.¹⁴⁶ Mediators must also not take bribes or gifts from any of the disputants until after the mission has been accomplished.¹⁴⁷ The mediator should use kind words, convince the stubborn party that peace is the more preferred solution, be flexible and adjust according to the moment, and if circumstances change with a party, the mediator should change the method of seeking peace.¹⁴⁸

The Krishna mediation method involves establishing a familial atmosphere between the parties, and if that does not work, he would promote fear in the parties.¹⁴⁹ He, as the mediator, also incentivized peace through the offer of presents.¹⁵⁰ It is imperative that a mediator make it clear that the premise of the mediation is for peace.¹⁵¹ A mediator should then inform the parties that “seeking peace is in accordance with dharma and the path of virtue, profit and desire.”¹⁵² Lastly, the mediator should inform the parties that they should not do adharma.¹⁵³ Parties should know that they can follow the path of dharma and are capable of avoiding adharma.¹⁵⁴ The parties should be informed of the benefits of following dharma and the dangers of following adharma.¹⁵⁵ The mediator needs to tell both parties that peace is reliant on the dharma of both sides, and each party should be made to understand that the other side is not afraid, but desire peace simply because it is the correct path forward.¹⁵⁶

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 355.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 355-56.

¹⁵² *Id.* at 356.

¹⁵³ *Id.* Adharma “rejects righteousness and leads to conflicts, is the pursuit of the opposite path of dharma.” *Id.* at 329.

¹⁵⁴ *Id.* at 356.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

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Other methods the mediator can take to push peace through is tell each side that they will receive a concession, and if a party disagrees believing they are just in their desires, then the mediator can tell this party that they are wrong in their belief.¹⁵⁷ If that fails, then the mediator should counsel the party that peace requires sacrifice and that the interests of the few should not outweigh the interests of the multitude.¹⁵⁸ On the flip side, the Mahabharata suggests that clients should not bribe the mediator to jeopardize neutrality.¹⁵⁹ Also, the client cannot be stubborn or have other similar characteristics because these qualities make the peace process more complicated than it needs to be.¹⁶⁰

In “Bhagavad Gita, Krishna taught that a warrior, or today--a lawyer--should fearlessly do their duty to the best of their ability.”¹⁶¹ Lawyers should not have feelings of remorse for their clients nor adversaries “because the spirit within all of us is the same and is indestructible.”¹⁶² Successful lawyers should maintain their composure while on the job and not be concerned over the result of their actions.¹⁶³ When lawyers perform their jobs appropriately, peace of mind will follow.¹⁶⁴

VI. Religious Dispute Resolution as a Method of Building Bridges

The conflict over Jammu and Kashmir between India and Pakistan contains both a territorial element and a significant religious element with a predominantly Hindu India and Muslim Pakistan.¹⁶⁵ As stated previously, the majority of the Kashmir region contains Muslims, but with people who follow Hinduism and Buddhism as well.¹⁶⁶ It is no secret that previous negotiations over the disputed region have not worked for various reasons, and a significant reason why is that both countries have people who loudly express outrage over

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 356-57.

¹⁵⁹ *Id.* at 357.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 360.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Ali Khan, *The Kashmir Dispute: A Plan for Regional Cooperation*, 31 COLUM. J. TRANSNAT'L L. 495, 496 (1994).

¹⁶⁶ *Id.* at 496.

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any sign of conciliation because it would weaken their negotiating strength.¹⁶⁷ In a heated conflict, local pressures can induce the governments to ramp up rhetoric against the other side as opposed to cooling things down.¹⁶⁸

Both India and Pakistan are democracies that need to appease the will of the people, including vocal groups such as religious nationalists, and Pakistan has been subject to military coups.¹⁶⁹ The key to bringing about a future resolution would likely have to be to cater to the desires of the people, specifically the religious nationalists, which is why this paper will argue that a religious-based mediation should be the method to bring both sides closer together as a bridge that may lead to a future agreement. This paper will not be arguing that religious mediation will solve the conflict however, but merely be a stepping a stone. To help resolve the conflict, there should be a third-party mediator who will mediate the conflict using both Hinduism and Islam in a very public manner in order to convince the people of both India and Pakistan to make peace on the basis that their religions require them to peacefully end their differences.

For mediators, both India and Pakistan can choose a group of judges from both countries acting similarly to the *Panchayat*, considering both countries already use it as a form of dispute resolution.¹⁷⁰ Furthermore, both countries have adopted formal dispute resolution for issues of lesser importance for the local population,¹⁷¹ but in this context ADR is being used for a more serious purpose. From the viewpoint of Pakistan, since the country operates under Sharia Law, Pakistan is obligated by Islam's most sacred text itself to resolve the dispute with India through ADR as opposed to resorting to violence.¹⁷² India, however, is constitutionally a secular country without identifying with any particular religion.¹⁷³ Nonetheless, in India, secularism does not mean separation of religion and government, but rather the freedom to exercise any religion.¹⁷⁴ Also, religious nationalism is very important in India,¹⁷⁵ and

¹⁶⁷ St. John, *supra* note 2, at 179.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Singh, *supra* note 6, at 34; Alizai & Sohail, *supra* note 7, at 2.

¹⁷¹ Singh, *supra* note 6, at 35; Alizai & Sohail, *supra* note 7, at 1.

¹⁷² Alizai & Sohail, *supra* note 7, at 2; Abu-Nimer, *supra* note 74, at 245.

¹⁷³ Sheetal Parikh, *Enshrining A Secular Idol: A Judicial Response to the Violent Aftermath of Ayodhya*, 37 CASE W. RES. J. INT'L L. 85, 93 (2005).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

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therefore, from the Indian point of view, India should follow the example of the Hindu god Krishna who is a solid example in how they should view the mediation process.¹⁷⁶

Both the Hindu god Krishna and the Prophet of Islam, Muhammad, were personally involved in peacemaking mediation efforts to avoid bloody conflicts.¹⁷⁷ This should show both Indian Hindu nationalists and Pakistani religious nationalists that individuals important to both of their faiths were involved in peacemaking, and thus they too should emulate these important figures in a similar fashion. Muhammad himself had no problem having a third party resolve a conflict he had with people of a different faith, such as the Jewish tribe Banu Qurayza,¹⁷⁸ and therefore Pakistani Muslims should also be willing to allow a third party to help mediate the land dispute with people of another faith just like the important prophet of the Islamic faith did. From the Hindu perspective, Krishna stated that kinsmen have a duty to seek peace with each other,¹⁷⁹ and since Pakistanis are technically Indian Muslims, then they are of kin to the people of India, and Hindu Indians should seek peace with Pakistan.

It is important to note that violence may be seen as an appropriate method of resolving disputes for both faith traditions,¹⁸⁰ which can give both countries justification for future violence. Nonetheless, under Islam, making peace with direct communication takes precedence over the use of force,¹⁸¹ and thus, that is what Pakistan is legally obligated to do because the country follows Sharia law. Likewise, under the Hindu approach, Krishna taught that peace should be sought even if your enemy severely wronged you, and that you resort to war when peaceful negotiation could not satisfy your needs.¹⁸² By following the Krishna approach, India should attempt to fully and honestly attempt peaceful negotiation with Pakistan and try to avoid violence at all costs for the sake of peace even if they feel justifiable anger towards Pakistan. The same ideals would hold true for the Muslims of Pakistan because the Quran mandates that Muslims prioritize forgiveness over animosity even while in a

¹⁷⁶ Sikand, *supra* note 122, at 336.

¹⁷⁷ Abu-Nimer, *supra* note 74, at 247; Sikand, *supra* note 122, at 355-57.

¹⁷⁸ Abu-Nimer, *supra* note 74, at 247 n.62.

¹⁷⁹ Sikand, *supra* note 122, at 354.

¹⁸⁰ Abu-Nimer, *supra* note 74, at 245; Sikand, *supra* note 122, at 354.

¹⁸¹ Abu-Nimer, *supra* note 74, at 246.

¹⁸² Sikand, *supra* note 122, at 354.

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state of fury,¹⁸³ and therefore, Pakistan should forgive India for what they perceived as transgressions against them.

The story of Muhammad getting the clans of Mecca working together to put the sacred Black Stone in its place can be a semi-blueprint for the course of mediation between Pakistan and India.¹⁸⁴ Just like Muhammad got the clans of Mecca to work together to find a solution, it would be imperative to find a solution that would involve the people of India and Pakistan. Another method that can help build bridges between both sides is the giving of gifts like Krishna did.¹⁸⁵ Mediators should publicly encourage the people of both countries to give gifts to each other in public displays in order to build up goodwill and support for a peace process.

Another good reason to pursue a peace process from the Hindu Indian perspective is because according to the Hindu god Krishna, one will attain merit for the process if you put forth your best effort.¹⁸⁶ Whether or not India will gain spiritual merit from a peace process, they can use the attempt at a peace process to show the world that they legitimately care and are serious about peace, just like Krishna taught.¹⁸⁷ Basically, India and even Pakistan may receive positive public relations from showing the world that a serious effort was made at obtaining peace with each other.¹⁸⁸ The most valuable lesson for Hindus in pursuing peace is Krishna's teaching that peace can be attained no matter how improbable as long as you exert yourself in that cause.¹⁸⁹ Both India and Pakistan may view peace as impossible, but at the very least the people should be widely informed of Krishna's teachings to mentally prepare them for the prospect of peace, and in a democratic country like India, getting the people to desire peace will make it easier on the elected government to make a peace deal.

Mediators should recommend to the people of Pakistan to pray to God for the people of India just like Muhammad prayed for the people of Mecca who

¹⁸³ Abu-Nimer, *supra* note 74, at 248 (referencing the *Quran* 42:37). "And those who avoid the major sins and immoralities, and when they are angry, they forgive." *Quran* 42:37.

¹⁸⁴ Abu-Nimer, *supra* note 74, at 247.

¹⁸⁵ Sikand, *supra* note 122, at 355.

¹⁸⁶ *Id.* at 354.

¹⁸⁷ *Id.*

¹⁸⁸ Pakistani officials have conceded in the past that peaceful relations could lead to "regional cooperation in commerce, technology transfer, [and] security and development . . ." St. John, *supra* note 2, at 176. An Indian official called the conflict a "criminal waste of resources." *Id.*

¹⁸⁹ Sikand, *supra* note 122, at 354.

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persecuted him.¹⁹⁰ Muhammad prayed for Meccans because Muslims are expected to be merciful,¹⁹¹ and thus, the Muslims of Pakistan should follow in the ways of Muhammad and also be merciful towards their neighbor India. Also, Pakistani Muslims should be informed to take note of the fact that Muhammad told his followers not to invoke God's wrath on their Meccan enemies, and so too should they not wish ill on their Indian neighbors, but rather be compassionate and merciful.¹⁹² In addition, Muhammad stressed that the most powerful people are those who maintain self-control when they get angry and show patience rather than act vengefully.¹⁹³ By following in the ways of Muhammad, Pakistan should avoid feelings of anger towards India, and more importantly, have patience because the conflict is not something that would likely end over some mediation, but rather using this religious-based ADR over some period of time between the peoples to convince the inhabitants of both countries that they are religiously obligated to pursue peace.

In any conflict where peace is necessary, the need for concessions and sacrifice are necessary, and that exactly fits in with the Krishna method of mediation.¹⁹⁴ For India, they should be made to understand that they will not necessarily get the result they want with Kashmir, but for the sake of peace a sacrifice will be necessary. Krishna also taught that the interests of the few should not outweigh the interests of the many,¹⁹⁵ and in a conflict where multiple wars have been fought, the interests of the multitude would be to make peace and avoid further bloodshed.¹⁹⁶ Additionally, the Krishna method of mediation requires the client, in this scenario India, to avoid stubbornness because it would make achieving peace more difficult.¹⁹⁷ The Hindu nationalists of India should not be obstinate in peacemaking, rather they should aim to achieve peace amicably.

¹⁹⁰ Abu-Nimer, *supra* note 74, at 248.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 252-53.

¹⁹⁴ Sikand, *supra* note 122, at 356-57.

¹⁹⁵ *Id.*

¹⁹⁶ With both countries being nuclear powers, the breakout of war could potentially lead to the use of nuclear weapons, which may cause the conflict between India and Pakistan to end tragically. Feeley, *supra* note 3, at 777.

¹⁹⁷ Sikand, *supra* note 122, at 357.

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Even though Pakistan is a state for Muslim Indians, Islam considers all humans to be equal,¹⁹⁸ and therefore the Muslims of Pakistan should be told to view Hindu Indians as their equals instead of as their enemies. If during Muhammad's time, he instructed his followers to respond peacefully to force used against them,¹⁹⁹ Muslims today should follow in the ways of Muhammad and behave similarly. The primary reason why Muslims of Pakistan should be included in the mediation process along with the ruler is because the Islamic consultation process of *shura* insists a ruler receive public and private consultation in the governing process mandates it.²⁰⁰ The concept of *shura* may also be similarly applied to India, where mediating the conflict should be between the governments of India and Pakistan with the inclusion of the people to both convince and prepare them for a future peace over Kashmir.

VII. Conclusion

The territorial dispute over the Kashmir region between India and Pakistan has caused multiple bloody wars between the two countries.²⁰¹ With previous United Nations mediations between the countries failing,²⁰² it is necessary to try a different method of resolving the conflict. With most Indians professing the Hindu faith,²⁰³ and most Pakistanis professing the Islamic faith,²⁰⁴ a third-party mediator should mediate the involving the general populations of both countries. The primary function of the religious based mediation is not to make peace happen in a short period of time because that is unlikely, but rather it's to prepare the minds of people in countries to understand each other and eventually form a final peace agreement over the Kashmir region more likely with popular support from both sides.

Mediation between the people of India and Pakistan is possible for many reasons, one of which is the existing mediation systems in both countries,²⁰⁵

¹⁹⁸ Abu-Nimer, *supra* note 74, at 254.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 256.

²⁰¹ St. John, *supra* note 2, at 174.

²⁰² Subbiah, *supra* note 8, at 174.

²⁰³ Cossman & Kapur, *supra* note 4, at 156.

²⁰⁴ OXFORD ISLAMIC STUDIES ONLINE, *supra* note 5.

²⁰⁵ Singh, *supra* note 6, at 35; Alizai & Sohail, *supra* note 7, at 1.

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including the use of the *Panchayat*.²⁰⁶ Furthermore, Pakistan is a country with Islamic Shariah Law as the law of the land, which requires them to follow the dictates of the Quran and any methods of peacemaking and mediation that it proscribes.²⁰⁷ ADR techniques are preferred to violence under Islamic doctrine.²⁰⁸ Islam's most sacred prophet, Muhammad, himself functioned as a mediator between enemies,²⁰⁹ and encouraged mercy on those who persecuted him,²¹⁰ which is an example the Muslims of Pakistan can follow.

As an example, for Hindu Indians, the Hindu god Krishna attempted to mediate a conflict to prevent a war,²¹¹ and if Krishna can do it, why not the Hindus of India also? Krishna felt that with the strong will and sacrifice, kinsmen have the capability of making peace with each other.²¹² All in all, if the people of India and Pakistan are involved in a long-term process of mediation between each other using the religious doctrines of the majority of people living in both countries, then it is possible that one day in the future both countries may have a lasting peace.

²⁰⁶ Singh, *supra* note 6, at 34; Alizai & Sohail, *supra* note 7, at 2.

²⁰⁷ Alizai & Sohail, *supra* note 7, at 2.

²⁰⁸ *Id.*

²⁰⁹ Abu-Nimer, *supra* note 74, at 247.

²¹⁰ *Id.* at 248.

²¹¹ Sikand, *supra* note 122, at 336.

²¹² *Id.* at 354.